In the High Court of Uttaranchal, at Nainital.

Appeal From Order No. 328/2004

1- Km. Deepa Manral D/o late P.S. Manral,
2- Smt. Devki Devi W/o late P.S. Manral,
Both R/o Trilok Nagar, Do Naheria, Haldwani,
District Nainital …. Appellants.

Versus

1- Pushpendra Singh S/o Suraj Mal
R/o 41-A, Lal Bagh, Gandhi Colony,
Muzzafarnagar (owner of truck No. UP-12/2032)

2- Untied India Insurance Company Ltd. h
through Divisional Manger, Divisional
Office, Tikonia, Haldwani,
District Nainital.

3- M/s Krishna Nursing Home, through
Dr. J.S. Khurrana, R/o Guru Nanak Pura
Bhotia Parav, Haldwani
District Nainital.

4- National Insurance Company Ltd.
through its Divisional Manager,
Divisional Officer, Canal Road,
Haldwani, District Nainital … Respondents.

Ms. Farida Siddiqui, learned counsel for the appellants.
Sri Naresh Pant, Advocate, for respondent No.2.
Sri D.S. Patni, Advocate for respondent No.4.

Coram: Hon'ble P.C. Verma, J.
Hon'ble B.C. Kandpal, J.

Dated: May 15, 2006

This Appeal from Order, under Section 173 of the Motor Vehicle Act, 1988, has been preferred against the judgment and award dated 3-6-2004, passed by Motor accident Claim Tribunal/ District Judge Nainital, in M.A.C.P. No. 16/2003, Km. Deepa Manral and another Versus Pushpendra Singh and others, whereby the claimants/appellants were awarded Rs. 1,20,000/- as compensation against the Opposite Parties/Respondent Nos. 2 and 4 (Insurance Companies) along with interest @ 9% per annum from the date of filing of the claim petition till the date of final payment.

2- Brief facts of the case are that on 8-10-2002 deceased Prem Singh Manral along with Laxman Singh were taking their ailing

brother Dan Singh from Haldwani to Patiyala for treatment in Ambulance Maruti Van bearing registration No. U.P. 02-D/ 4689 and when at about 7.30 A.M. they reached near village Munda pande, Moradabad, truck No. U.P. -12/2032 came there from opposite direction very rashly and negligently and dashed the Maruti Van. It was also alleged that the driver of Maruti Van No. U.P. 02-D/4689 was also driving the Maruti Van rashly and negligently and accident took place by the negligence of the drivers of both the vehicles. Due to the accident Laxman Singh and Dan Singh sustained grievous injuries, whereas Prem Singh Manral died at the spot due to the injuries sustained by him. According to the claim petition, the deceased Prem Singh Manral was a retired class IV employee from Sales Tax Department and was getting Rs. 2026/- per month as pension and was also earning Rs. 2000/- per month from other works. At the time of the accident he was aged about 60 years. In this way the claimants claimed Rs. 6,00,000/- as compensation.

3- The O.P./respondent No. 1, owner of offending truck No. U.P. -12/2032 filed W.S. stating therein that the driver of the tuck was driving it cautiously. The driver was having a valid driving licence and the truck was insured with United India Insurance Company. Hence he is not liable to pay the compensation.

4- The O.P./respondent No.2 United India Insurance Company filed its W.S. and alleged that the accident had taken place due to the rash and negligence of the driver of Maruti Van, hence the Company is not liable for compensation.

5- The O.P. /respondent No.3, owner of Maruti Van also field his W.S. and alleged that the Maruti van was being driven by a driver having valid-driving licence and the Vehicle was insured with O.P./respondent No.4, National Insurance Company. The claim petition was bad for non-joinder of parties.

6- O.P./respondent No.4 filed its W.S. and pleaded that the petition was bad for non-joinder of parties. It was also pleaded that the claimants have exorbitant compensation.

7- The Tribunal, on the pleading of parties, framed relevant issued. Parties led evidence in support of their claim. The learned Tribunal, on assessment of evidence of the parties allowed the claim petition and awarded Rs. 1,20,000/- as companion to the claimants/appellants against both the Insurance Companies in equal share.

8- Feeling aggrieved, the claimants/appellants have preferred this appeal for enhancement of compensation.

9- We have heard the learned counsel for the parties and perused the record.

10- The sole grievance of the petitioners by way of this appeal is that the quantum of compensation as awarded by the Tribunal is too insufficient, unreasonable and meager as well as it is contrary to the facts and evidence on record. The petitioners have thus filed this appeal for enhancement of the quantum of compensation awarded by the claim Tribunal.

11- The record reveals that the deceased Prem Singh was aged about 60 years at the time of the accident. He was retired as a peon from the Sales Tax Department and was getting Rs. 2026/- per month as pension. It has been alleged in the claim petition that the deceased had been earning an additional amount of Rs. 2,000/- per month from the private work. Km. Deepa Manral has been produced as P.W.2 who has deposed before the court in her statement that the deceased was earning an additional amount of Rs. 2,000/- per month from his private work as a Hawker This witness is the daughter of deceased Prem Singh Manral. In case if the deposition of Deepa Manral is taken into account then it is clear that the deceased had been working as a Hawker after his retirement but the additional income from the work of Hawker as has been alleged by the petitioners in the claim petition appears to be quite excessive. It can be inferred that the deceased might have been earning an amount of Rs.500/- approximately per month from the work of Hawker. The age of the deceased was 60 years therefore the multiplier of 5, as has been adopted by the Tribunal, is proper and justified. The income as has been assessed by the Tribunal as Rs. 2,500/- per month, i.e. Rs.2000/- from the pension

and Rs. 500/- from the private work, appears to be adequate and justified. The annual income of the deceased thus comes to Rs. 30,000/- and after applying the multiplier of 5 this income comes to Rs 1,50,000/- and in case if 1/3rd of this amount is deducted against personal expenses of the deceased then it comes to Rs. 1,00,000/-. The Tribunal has, therefore, awarded the just and adequate amount of compensation in favour of the claimants/appellant.

12- With regard to the amount awarded by the Tribunal under the head of loss of love and affection and mental agony, as has been assessed by the Tribunal, as Rs. 20,000/-, we do not find any ground to interfere in it. Therefore, the Tribunal has rightly awarded a total amount of Rs. 1,20,000/- in favour of the claimants/appellants in lieu of the death of Prem Singh Manral. We also do not want to interfere in the finding recorded by the Tribunal that in case if the aforesaid amount is not paid by the Insurance Companies, i.e. O. P. Nos. 2 and 4, within a period of one month, then the claimants/appellants shall also be entitled for 9% per annum interest on the aforesaid amount from the date of filing the petition till the date of actual payment.

13- The appeal lacks merit and is liable to be dismissed.

14- Accordingly the appeal is dismissed. The judgment and award dated 3-6-2004, passed by M.A.C.T./Distt. Judge Nainital, in MACP No. 16/2003 is hereby confirmed.

(B.C. Kandpal, J.) **(P.C. Verma, J.)**

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